


**PRIVILEGED & CONFIDENTIAL**

Date: June 24, 2022

To: Sunday Vanderberg  
Clerk of the Board of Legislators

From: John M. Nonna   
County Attorney

Re: Legislation authorizing settlement of the pending NYS Supreme Court action  
*County of Westchester v. Proteus On-Demand Facilities, LLC*,  
Index No. 56257/2022 (Sup Ct, Westchester County)

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Pursuant to Rule Thirteen of the Rules of the County Board of Legislators, I am requesting immediate consideration of the attached legislation and that the same be placed upon the calendar for the next regular meeting on March 8, 2021.

If you have any questions, please contact me. Thank you for your attention to this matter.

George Latimer  
County Executive

Department of Law

John M. Nonna  
County Attorney

June 23, 2022

Westchester County Board of Legislators  
800 Michaelian Office Building  
148 Martine Avenue  
White Plains, NY 10601

Re: An Act authorizing the County of Westchester to settle the pending NYS Supreme Court action *County of Westchester v. Proteus On-Demand Facilities, LLC*, Index No. 56257/2022 (Sup Ct, Westchester County)

Dear Honorable Members of the Board:

Attached for your review is proposed legislation that, if enacted, would authorize the County of Westchester to enter a settlement and general release agreement fully resolving the NYS Supreme Court plenary action titled *County of Westchester v. Proteus On-Demand Facilities, LLC*, Index No. 56257/2022 (Sup Ct, Westchester County) (the "Action").

### **The Authorizing Act**

On February 7, 2022, the Westchester County Board of Legislators duly adopted Act No. 8-2022, which authorized the County Attorney to commence an action against Proteus On-Demand Facilities, LLC ("Proteus") relating to a lease agreement for temporary structures. A copy of the Act No. 8-2022 is annexed hereto, and familiarity with the issues outlined therein is assumed. Briefly—the structures were leased for the purpose of lodging sixteen- and seventeen-year olds facing criminal charges as juveniles as a result of NYS's Raise the Age Law.

### **The Instant Action**

The County commenced the Action on February 8, 2022, asserting two causes of action against Proteus: (i) rescission of the lease into which the parties entered into on August 6, 2018, as subsequently amended (the "Lease") based upon the directive from the NYS Office of Children and Family Services and the State Commission of Correction that the structures could no longer be used to detain juveniles; and (ii) declaratory judgment that the County was not liable for certain alleged change orders related to the lease. Proteus was served as of March 11, 2022. Proteus has yet to answer, as the County has repeatedly adjourned its time to answer to accommodate ongoing settlement discussions.

### **Proposed Settlement**

On June 9, 2022, the parties agreed in principal to settle the Action, the Lease, and all tangential claims. Under the terms of the proposed settlement, Proteus will accept in full satisfaction of its claims against the County payment of one million six hundred thousand and 00/100 dollars (\$1,600,000.00). Upon payment of same, among other things:


- **Lease Terminated:** The Lease is terminated;
- **Purchase of Goods:** The County purchases two temporary structures and, as applicable, flooring, carpeting, lighting, electrical, HVAC, items of interior design and related equipment and other tangible items (collectively, the "Goods"), with all rights, title(s), and any other interest in said Good being transferred to the County;
- **General Release:** Proteus releases and forever discharges the County, its administrative subdivisions, officers, directors, etc., from any and all claims, liabilities, etc.; and
- **Discontinuance of the Action:** After the required papers are filed to NYSCEF, the Action is discontinued with prejudice and without costs.

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I respectfully request authority from this Board pursuant to Section 158.11 of the Westchester County Charter to enter into the proposed Settlement and General Release Agreement and settle the above-referenced matter. I therefore recommend passage of the accompanying Act.

Very truly yours,



John M. Nonna  
County Attorney

JMN/stc

BOARD OF LEGISLATORS  
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if enacted by your Board, would authorize the County of Westchester to enter a settlement and general release agreement fully resolving the plenary action titled *County of Westchester v. Proteus On-Demand Facilities, LLC*, Index No. 56257/2022 (Sup Ct, Westchester County) (the “Action”).

On February 8, 2022, the Westchester County Attorney’s Office—as authorized by the Westchester County Board of Legislators and the Westchester County Executive pursuant to the duly adopted Act. No. 8-2022—commenced the Action against Proteus On-Demand Facilities, LLC (“Proteus”). The subject of the Action was a lease agreement between the County and Proteus (the “Lease”), which was for the use of temporary structures intended to lodge sixteen- and seventeen-year olds facing criminal charges as juveniles as a result of New York State’s Raise the Age Law (the “Temporary Structures”).

As a result of negotiations with Proteus’s counsel, the terms of a proposed settlement were negotiated. Under the terms of the proposed settlement, the County would pay Proteus one million six hundred thousand and 00/100 dollars (\$1,600,000.00); the Lease would be terminated; and the County would purchase the Temporary Structures.

Your Committee recognizes that entering into the proposed settlement will allow the County to settle this matter without further litigation or trial. Moreover, despite reasonably strong defenses, the County was facing potential liability in excess of the settlement amount.

Your Committee has carefully considered the matter and recommends approval of the annexed Act. The Act, which would authorize the County to enter into the proposed settlement to effectuate the resolution of the lawsuit, is in the best interests of the County.

Your Committee therefore recommends this Honorable Board approve the annexed Act authorizing the County to enter into the proposed settlement of the above-referenced lawsuit. An affirmative vote by a majority of the Board is required to pass this Act.

Dated: White Plains, New York  
July \_\_, 2022

ACT NO. 2022

An Act authorizing the County of Westchester to settle the pending action *County of Westchester v. Proteus On-Demand Facilities, LLC*, Index No. 56257/2022 (Sup Ct, Westchester County)

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

1. The County of Westchester is hereby authorized to settle the plenary proceeding pending in the Supreme Court of the State of New York, County of Westchester, titled *County of Westchester v. Proteus On-Demand Facilities, LLC*, Index No. 56257/2022 (Sup Ct, Westchester County), including all claims by and between the County and defendant Proteus On-Demand Facilities, LLC, that exist as of the date of this Act, by disbursing to Defendant an amount not to exceed one million six hundred thousand and 00/100 dollars (\$1,600,000.00).
2. The County Attorney or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Attorney deems necessary or desirable to accomplish the purpose hereof.
3. This Act shall take effect immediately.



# FISCAL IMPACT STATEMENT

SUBJECT: Civil Litigation to Void Lease (Proteus)

NO FISCAL IMPACT PROJECTED

## OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A)  GENERAL FUND       AIRPORT       SPECIAL REVENUE FUND (Districts)

### B) EXPENSES AND REVENUES

Total Current Year Cost      \$ 1600000

Total Current Year Revenue \$ \_\_\_\_\_

Source of Funds (check one):       Current Appropriations

Transfer of Existing Appropriations       Additional Appropriations       Other (explain)

Identify Accounts: 101-39 2000:2200-4380

Potential Related Operating Budget Expenses:      Annual Amount \$ \_\_\_\_\_

Describe: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Potential Related Revenues:      Annual Amount \$ \_\_\_\_\_

Describe: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Next Four years: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Prepared by: Sean T. Carey

Title: Senior Assistant County Attorney

Department: Law

Reviewed By



Budget Department

6-24-22

If you need more space, please attach additional sheets.